

economic rights

The United Nations High Commissioner for Human Rights (UNHCHR) recently released a report on the implementation and monitoring of economic, social and cultural (ESC) rights (UN doc. E/2009/90).

The report defines 'implementation' as 'the act of putting into effect a decision, or providing practical means to accomplish something'. This implies moving from the acceptance of international human rights obligations to the adoption of appropriate measures and eventually ensuring that the rights are enjoyed by all (para 3). 'Monitoring', on the other hand, is defined as 'a systematic gathering of information with a view to evaluating compliance with human rights commitments' (para 5). These concepts are interlinked. Implementation involves measures adopted and results achieved (process and outcome), while monitoring assesses whether appropriate measures have been adopted and applied and evaluates their results. Hence 'monitoring provides feedback for implementation' (para 8).

The report also discusses the various ESC rights obligations and ways of monitoring those rights.

These are summarised below.

ESC rights obligations

ESC rights entail negative and positive obligations (para 10). A negative obligation requires states to refrain from certain behaviour such as taking measures that would result in illegal evictions. A positive obligation requires states to adopt measures aimed at realising these rights. The report also refers to the obligations to *respect* (requiring states 'to refrain from unduly interfering with the enjoyment of a right'); *protect* (requiring states 'to prevent, deter, stop or impose sanctions on third parties when they are unduly interfering in the enjoyment of a right'); and *fulfil* (requiring states 'to facilitate, provide or promote the enjoyment of a right when the right holders, for reasons that are beyond their willingness or capacity, cannot do so') (para 11).

It further notes the obligation of progressive realisation, which implies improvement over time. Hence, in many instances, the realisation of ESC rights would be gradual and depend on

the availability of resources (para 12). Comparisons over time to evaluate whether there has been progress, stagnation or retrogression would be required in monitoring progressive realisation (para 14). However, not all obligations are qualified by the notion of progressive realisation, as minimum core obligations are of immediate effect. The report cites the example of the right to adequate housing, which implies an immediate obligation to protect people from forced evictions (para 12).

Another crucial obligation is in relation to non-discrimination, which is contained in all core international human rights treaties. This obligation imposes both positive and negative obligations on states. States have the obligation to refrain from engaging in discrimination in law and fact. They also have the duty to eradicate discriminatory laws and practices (paras 17 and 18). To comply with these obligations, such a state is required to

detect existing discriminatory norms and repeal them, identify current discriminatory practices and adopt normative and other types of measures to eradicate them, and ensure the adequate application of such measures both to itself and to private parties (para 19).

Furthermore, the report considers the implications of the different types of obligations discussed above for the implementation and monitoring of ESC rights (see paras 20–25). In this regard, it notes, for instance, that to evaluate the obligation of progressive realisation, monitoring efforts should measure achievements; detect failures, gaps and retrogression; and be geared at readjusting state action when necessary (para 24).

The report also urges states to identify, eliminate or revise discriminatory laws, policies, programmes and practices (para 25).

Approaches and methods of monitoring

Monitoring legislation and normative institutional frameworks

As stated in the report, two questions are central to monitoring legislation and normative institutional frameworks: first, 'whether legislative and other necessary normative measures have been actually adopted' (para 29); and second, whether the adopted legislative and normative measures comply with international human rights standards (para 30). The second question deals with the

compliance of the measures with both substantive and procedural aspects of international human rights (paras 32 and 33).

Monitoring the realisation of ESC rights

The report identifies a number of ways of monitoring the implementation of ESC rights.

Human rights impact assessments

These are conducted before the adoption of policies, programmes or projects. They are used to predict the future consequences of proposed policies, programmes and projects so as to address their shortcomings before they are adopted and implemented (para 35). Though it is not possible to prescribe a single model for conducting human rights impact assessments, the report sets out the following practical steps to be considered:

(a) carrying out a preliminary check to determine the need for the assessment; (b) preparing an assessment plan, which should involve all the relevant stakeholders and provide them with the necessary information about the proposed measures and specific details of the rights and obligations at stake; (c) collecting the relevant information from the stakeholders; (d) performing a rights analysis by comparing the information collected with the relevant human rights obligations of the State; (e) circulating the draft analysis of the rights to all stakeholders and debating alternatives with them; and (f) making the final decisions, adopting policy measures according to the assessment and establishing mechanisms to evaluate the policy implementation and results (para 37).

Indicators and benchmarks

The report states that indicators and benchmarks are important in monitoring progress, stagnation and retrogression in the realisation of rights (para 39). The office of the UNHCHR has developed a conceptual framework of qualitative and quantitative human rights indicators (para 40). Appropriate indicators have to be selected, as these facilitate the use of benchmarks to assess progress. Benchmarks are targets or measurable goals that states commit themselves to achieving in a given period of time: for example, to reduce the incidence of school dropouts by a specified year. They offer better parameters to monitor the

adequacy of the state's efforts to realise rights (para 41). Indicators and benchmarks can enhance the capacity of states to assess and improve the results of policies, plans and programmes; improve the effectiveness of international monitoring by treaty bodies; and enhance the transparency and accountability of state policies. They can also be used in litigation as a possible source of evidence in court settings (para 42). The report also identifies the limitations of using indicators and benchmarks, including a lack of information and difficulties in disaggregating data. Hence indicators need to be used with other sources of information (para 43).

Budget analysis

Since achieving ESC rights requires budget allocations, the report further considers budgetary analysis as a tool for monitoring the implementation of ESC rights (paras 44 and 46). A budget is useful in evaluating which normative commitments are taken seriously by states, as it demonstrates a state's preferences, priorities and trade-offs in spending (para 46). The report identifies ways in which budget analysis can be conducted. Static analysis evaluates a budget and provides direct information on the resources available for states to carry out their mandates (paras 48 and 49). Dynamic analysis, on the other hand, compares the evolution of budgets over time. It looks at variations in allocations and spending over different periods.

Monitoring violations of ESC rights

The report sees documenting ESC rights violations and making them public as an important tool for holding the responsible authorities to account (para 69). It notes different forms in which violations of these rights may occur, such as through state action, inaction or omission (para 58). As a way of tracking violations of ESC rights, the report recommends keeping records of complaints filed by victims before judicial and quasi-judicial bodies (para 64).

Conclusion

The report concludes by noting, among other things, that the monitoring of ESC rights at the international level will be strengthened by the entry into force of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008. The report is a very useful guide for those working in the area of ESC rights and monitoring the implementation of these rights.

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The report of the UNHCHR on the implementation of ESC rights is available at <http://daccessdds.un.org/doc/UNDOC/GEN/N09/362/90/PDF/N0936290.pdf?OpenElement>